

[Avery v. Duke Power Co., 94-ERA-46 \(ALJ Feb. 14, 1996\)](#)

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Date: February 14, 1996

Case No. 94-ERA-46

In the Matter of

ROBERT AVERY,
Complainant,

v.

DUKE POWER COMPANY,
Respondent,

*RECOMMENDED DECISION AND ORDER APPROVING
SETTLEMENT AGREEMENT AND DISMISSING COMPLAINT*

This case comes before the Secretary for the second time. Previously, Complainant, Robert W. Avery, acting *pro se*, had moved to dismiss his claim under the Energy Reorganization Act of 1954 on grounds that he was unable to obtain an attorney and was not qualified to represent himself. Respondent Duke Power Company replied that it did not object to the dismissal of the complaint so long as that dismissal was with prejudice. Complainant apparently agreed to this stipulation. Thus, on March 22, 1995, I recommended to the Secretary that he dismiss the complaint with prejudice. Instead, the Secretary issued an order to show cause why the case should not be dismissed with prejudice. Complainant responded to the Secretary that he did not want the case dismissed but was not qualified to represent himself and was unable to secure the services of an attorney. Next, on May 2, 1995, the Secretary issued an order allowing Complainant 30 days in which to secure the services of an attorney or advise that he was prepared to proceed *pro se*. By letter dated May 19, 1995, Complainant

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advised the Secretary that he was prepared to go forward with representation of counsel. Accordingly, the Secretary remanded the case to me for further proceedings.

As a result of further negotiations, the parties have reached a settlement that is embodied in the attached settlement agreement. Although the agreement results in payment to the

Complainant of a nominal amount of money, because Mr. Avery was adequately represented by counsel, I am persuaded that the settlement agreement fairly, reasonably and adequately disposes of the allegations raised in the complaint. Further, the settlement agreement is structured so as to keep the channels of information open in order to facilitate future enforcement of safety and environmental statutes. Thus, I believe that the settlement accords with DOL policy in this regard.

Therefore, IT IS RECOMMENDED that the proposed settlement agreement be approved and that this proceeding be dismissed with prejudice.

RECOMMENDED ORDER

IT IS ORDERED that the settlement agreement between the parties be, and hereby is, approved and that the complaint of Robert W. Avery be, and hereby is, dismissed with prejudice.

FLETCHER E. CAMPBELL, JR.
Administrative Law Judge

NOTE: *This recommended order and the administrative file in this matter will be forwarded for review by the Secretary of Labor to the Office of Administrative Appeals, U.S. Department of Labor, Rm. S-4309, Frances Perkins Building, 200 Constitution Avenue, N.W., Washington, D.C. 20210. The Office of Administrative Appeals has the responsibility to advise and assist the Secretary in the preparation and issuance of final decisions in employee protection cases adjudicated under 29 C.F.R. parts 24 and 1978. See 55 F.R. 13250 (1990).*

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